

Remarks

Claims 1 and 8 – 10 are amended hereby. Claim 7 is canceled. Claims 1 – 6 and 8 – 12 are the pending herein.

Claims 1 – 6 and 11 stand rejected under §102(b) as being anticipated by Scher et al. (US 5,912,207) (Scher '207). Applicants respectfully traverse.

Scher '207 describes, *inter alia*, the formation of metal chelates of herbicidal dione compounds as a means of chemically stabilizing the herbicidal dione active ingredient. Phosphate salts are simply mentioned as an appropriate source of di- or tri-valent metals – and not in the context of adjuvants. Sher '207 does not describe the phosphate as defined in amended claim 1. Accordingly, withdrawal of the §102 rejection of claims 1 – 6 and 11 over Sher '207 is respectfully requested.

Claims 1 – 8, 11 and 12 (now 1 – 6, 8, 11 and 12) stand rejected under §102(a) and (e) as being anticipated by Pallett et al. (WO 02/21919) (Pallett). Applicants respectfully traverse.

Pallett teaches, *inter alia*, a composition comprising ethoxylated tristyril phenol phosphate (Soprophor FL). It is submitted that this phosphate is not encompassed by the amended claims. Accordingly, withdrawal of the §102 rejection of claims 1 – 6, 8, 11 and 12 over Pallett is respectfully requested.

Claims 1, 11 and 12 stand rejected under §102(a) as being anticipated by Sher et al. (WO 01/95722) (Sher '722). Applicants respectfully traverse.

Sher '722 teaches, *inter alia*, a method for improving the selectivity of 1,3-cyclohexanedione herbicides. Phosphate salts are simply mentioned as an appropriate source of di- or tri-valent metals. Sher '722 does not describe the phosphate as defined in amended claim 1. Accordingly, withdrawal of the §102 rejection of claims 1, 11 and 12 over Sher '722 is respectfully requested.

The Examiner rejects claims 7 and 9 – 10 (now 9 – 10) under § 103 as being unpatentable over Scher et al. (US 5,912,207) (Scher '207) in view of Kleiner et al (WO 98/00021). Applicants respectfully traverse.

By way of summary, the present invention provides a formulation which improves the selectivity of the 2-(substituted benzoyl)-1,3-cyclohexanedione herbicides of formula (I). This is

achieved by including in the formulation certain phosphate, phosphonate or phosphinate adjuvants, as defined by the amended claims, which have been shown to improve the level of activity of the 2-(substituted benzoyl)-1,3-cyclohexanedione with little or no increase in crop damage; i.e. the selectivity of the 2-(substituted benzoyl)-1,3-cyclohexanedione is increased. Accordingly, the phosphates, phosphonates and phosphinates of the present are added in the role of an adjuvant.

As already mentioned, Sher '207 simply describes the formation of metal chelates of herbicidal dione compounds as a means of chemically stabilizing the active ingredient. Phosphate salts are only mentioned in the context of providing an appropriate source of di- or tri-valent metals; not in an adjuvancy context.

Kleiner et al teaches, *inter alia*, fungicide compositions comprising a mixture of a fungicide and at least one phosphonate or phosphinate. Kleiner et al further discloses that phosphonates of formula I considerably enhance the fungicidal activity of fungicides - especially fluquinconazole and Azoxystrobin (page 6).

Applicants respectfully submit that one of ordinary skill would have no reasonable expectation of success in the combination of Sher '207 and Kleiner et al in the manner suggested by the Examiner. Kleiner et al is only concerned with the provision of phosphonates or phosphinates for use in fungicide containing compositions. There is no support in the cited references for the Examiner's contention that the phosphonates or phosphinates of Kleiner et al, which are shown to improve performance of certain fungicidal compounds, would also improve the herbicidal activity (selectivity) of 2-(substituted benzoyl)-1,3- cyclohexanedione herbicides. The herbicides of the primary reference and fungicides of the secondary reference are chemically and functionally unrelated. Accordingly, such combination is only motivated in view of improper hindsight based on the teaching of the present invention. Applicants respectfully submit that the amended claims are patentable over US 5,912,207 and WO98/00021. Reconsideration and withdrawal of the 103 rejection are respectfully requested.

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In view of the foregoing amendments and remarks, Applicants submit that the claims are in condition for allowance. Reconsideration and withdrawal of all rejections are respectfully requested, along with the issuance of a Notice of Allowance.

Respectfully submitted,

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